

### **REMARKS**

Applicant thanks the Examiner for providing the opportunity of a telephone interview with Applicant's undersigned representative on May 25, 2004.

During the interview, Applicant's representative discussed aspects of Applicant's invention and explained why the invention as claimed for example in independent claim 2 is patentably distinguishable over the cited references, including Tiedemann Jr. et al., U.S. Patent No. 5,914,950. In particular, Applicant's representative explained that Tiedemann does not disclose or suggest determining a maximum transmission rate for a next scheduled transmission time slot for each said mobile station based directly a transmission error rate.

No agreement was reached. Near the conclusion of the interview, the Examiner invited the submission of written arguments responsive to the outstanding Office Action. The foregoing will serve as Applicant's statement of the substance of the interview.

Claims 1, 4, 6, 7, and 9 have been cancelled, and claims 11-14 have been withdrawn, therefore claims 2, 3, 5, 8, and 10 are the claims currently pending and presented in the present Application.

### ***Formal Matters***

Applicant thanks the Examiner for acknowledging the claim for foreign priority and the receipt of the priority document.

Further, Applicant thanks the Examiner for indicating in the Office Action dated January 16, 2003 the review and consideration of the references cited in the Information Disclosure Statements filed on November 19, 1999, December 13, 2002 and December 23, 2002.

***Rejection of Claims 2, 3, 5, 8 and 10 under 35 U.S.C. § 102(e)***

Claims 2, 3, 5, 8 and 10 are rejected under 35 U.S.C. § 102(e), as being anticipated by Tiedemann Jr. et al., U.S. Patent No. 5,914,950. This rejection is traversed.

Independent claims 2, 3, 5, and 10 require, *inter alia*, determining a maximum transmission rate for a next scheduled transmission time slot for a mobile station based directly on the transmission error rate. Tiedemann does not disclose or suggest this feature.

Tiedemann discloses a method and apparatus for scheduling communications from remote stations to a base station and setting the maximum rates for the scheduled communications (Tiedemann, Abstract; col. 8, line 66-col. 9, line 60). Tiedemann discloses that the rate of transmission from the remote station may be scheduled by the channel scheduler 12 taking into account such information as the number of scheduled and unscheduled tasks, the transmit power available to each remote station, the Q size indicating the amount of data to be transmitted by each remote station, the  $E_b$  (energy per bit) to (N+I) ratio as measured for each remote station, priority of remote stations in the total power received at each cell for the prior scheduling, and other information (Tiedemann, col. 9, lines 24-54).

The Examiner cites Tiedemann col. 16, lines 33-43, and alleges that Tiedemann discloses determining a maximum transmission rate taking into account the transmission error rate. The cited passage of Tiedemann discloses an FER (Frame Error Rate) determination used for temporarily assigning a lower transmission rate to the remote station if the FER is high or if the measured total received power  $P_{total}$  is above the predetermined threshold (Tiedemann, col. 16, lines 33-37). Tiedemann discloses that the cell can also “temporarily assign lower transmission rates to remote stations...if the FER at the cell is high....” (Tiedemann, col. 16, lines 33-37, *underline added*), and that the “transmission rates can be sent to remote stations immediately without having to wait for the next scheduling period” (Tiedemann, col. 16, lines 37-39, *underline added*). That is, Tiedemann is clear that the lowered assigned transmission rate is on an *ad hoc* temporary basis for the present time period. Thus, Tiedemann does not disclose or suggest determining a maximum transmission rate for a next scheduled transmission time slot for a mobile station based directly on the transmission error rate.

Further, Tiedemann discloses that the FER may be used to predict required energy per bit,  $E_b$ , and that the mobile station transmits the maximum power, the Q size and the required energy per bit,  $E_b$  (Tiedemann, col. 18, lines 10-42). Tiedemann discloses that the  $E_b$  may be considered in assigning a transmission rate to the remote station (Tiedemann, col. 18, lines 37-42).

Tiedemann does not disclose or suggest that rate is determined based directly on the FER. That is, while in one embodiment Tiedemann discloses that the FER may be used to predict the  $E_b$ , it is the  $E_b$ , not the FER and the other factors disclosed by Applicant’s invention as recited in the independent claims, that is considered in assigning

a transmission rate. Therefore, a transmission rate is not based on, and clearly not based directly on the frame error rate and the other factors, as, *inter alia*, required by independent claims 2, 3, 5 and 10.

In fact, Tiedemann does not even remotely disclose or suggest this feature and may be said to teach away from determining a maximum transmission rate based directly on the transmission error rate and the other recited factors, because Tiedemann specifies that is the  $E_b$  that should be directly considered in assigning a transmission rate.

Claim 8 depends from independent claim 5, and thus incorporates novel and nonobvious features thereof. Therefore, claim 8 is patentably distinguishable over the prior art for at least the reasons that independent claim 5 is patentably distinguishable over the prior art.

For at least the reasons set forth in the foregoing discussion, Applicant believes that the Application is now allowable and respectfully requests that the Examiner reconsider the rejections and allow the Application. Should the Examiner have any questions regarding this Amendment or the Application generally, the Examiner is invited to telephone the undersigned attorney.

Respectfully submitted,



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